

TAXATION LEGISLATION AMENDMENT BILL 2014

Second Reading

Resumed from 13 August.

MR W.J. JOHNSTON (Cannington) [10.09 am]: Yesterday, in my contribution to debate on the Taxation Legislation Amendment Bill 2014, I went through a number of questions that I would appreciate the minister responding to in detail in his second reading reply. I wonder also whether the minister could let us know whether an application can come to him other than from the Commissioner of State Revenue. Yesterday I asked about the circumstances that permitted the consideration of an application. Would the minister accept submissions from an applicant at an Australian Institute of Company Directors function, the football or a Liberal Party fundraiser? Can the applicant make that application other than through the Office of State Revenue? Does the Commissioner of State Revenue have to know about an application before the minister considers it, and does the minister have any discretion as to what legally constitutes an application? Is there a prescribed form or specific document that needs to be provided to the minister?

I have read some of the provisions regarding appeal processes and appeal rights, but I wonder exactly how that will that be dealt with by the minister. Members have to look only at what is happening in the Independent Commission Against Corruption in New South Wales, with the Liberal Party's collection of illegal donations and the appalling conduct of the Liberal Party in New South Wales, to understand why I am asking these questions and why giving discretion to the minister might encourage the same sort of improper behaviour that has characterised the Liberal Party in New South Wales being imported into Western Australia, and having the same type of illegal activity happen here as happened in New South Wales. We would not want that.

Mr G.M. Castrilli interjected.

Mr W.J. JOHNSTON: At the moment we are finding out about all the things that happened in the Liberal Party. Let the Premier resign over corruption matters.

The ACTING SPEAKER (Mr N.W. Morton): Members, there is conversation going across the chamber. The member for Cannington has the call.

Mr W.J. JOHNSTON: Thank you very much, Mr Acting Speaker; I appreciate the protection from the Liberal Party backbencher trying to savage me.

As I said yesterday, there could be a good reason why political parties and trade unions are specifically mentioned when they are not capable of being considered a fourth arm charity. These are all important issues for us. We have not tried to unnecessarily delay the bill. Some interesting issues have been raised in the debate. I think it has been very positive and it is a great opportunity for this chamber to examine this important legislation. We look forward to going into consideration in detail. This is important legislation. It has been rushed in in response to the decision of two years ago with amazing speed. I understand that that is not the minister's fault because this legislation comes out of the Treasury portfolio, even though he handles it in the chamber. It is interesting to look at this question of taxation policy. When Paul Keating became Treasurer, they took taxation policy off him and gave it to Ralph Willis who at that time was the Minister for Finance. People thought that Paul Keating was too inexperienced to handle the whole of the Treasury portfolio. Of course, he went on to become Australia's greatest Treasurer. There is this history of splitting up these matters into different jurisdictions.

These are important questions. I look forward to the minister's answer and the examination of some of the specific wording when we get into consideration in detail.

MS J.M. FREEMAN (Mirrabooka) [10.12 am]: I, too, rise to speak about this taxation legislation. I thank my colleagues for their contributions to the debate. The Taxation Legislation Amendment Bill 2014 amends four pieces of taxation legislation. An application before the courts by the Chamber of Commerce and Industry of Western Australia and the State Administrative Tribunal has resulted in a refund of \$56 million from what I understand is a loss to payroll tax revenue of up to \$10 million per annum. I think the \$56 million is over a long period because it has taken a long time for this legislation to find its way into this house.

I see the Minister for Finance talking to his advisers, so I will wait a bit. I think this taxation legislation is a bit of a misnomer. It is "better act now to protect ourselves" legislation from the possible changes that will occur given that the CCI has a tax-free operation and also the changes to the introduction of the federal Charities Act 2013. I am somewhat concerned that the second reading speech and the explanatory memorandum failed to explain and inform this house that as of 1 June 2014, the Charities Act 2013 came into operation. That act fundamentally changes definitions of "charity" in our community. It fundamentally changes how we deal with the definition of charities in our not-for-profit organisations. I want to go through that in some detail. It took me some time to sit

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

down and research this. It was disappointing to discover that the delay was not that the government minded paying back the CCI; the delay came about because there is a new act that expanded and pulled in a whole bunch of Federal Court and High Court decisions. It looked at the charities so that every time a new organisation such as the Victorian Women Lawyers Association or the CCI or other organisations want to get charitable status, they no longer have to go through a long legalistic process. A statutory body was established as a result of the Charities Act and there is now a clear statutory definition of charities.

Suddenly we have this taxation bill in front of us that we have to deal with now when all the other bills we have had before us were urgent. The member for West Swan pointed out, interestingly, the juxtaposition of the changes to the waste management levy which would cost the state taxpayers money and the haste with which it was brought into this place. That bill had to be moved very quickly, yet the government took its time with this. My concern is that the government took its time not because it minded that the CCI was found out to be a not for profit that did not have to pay payroll tax, but because this government was concerned about the prospects of other charitable organisations, given the Charities Act. The act passed in the federal Parliament in June 2013. Although there was opposition from the then Liberal opposition—the now government—it is still operational. When I came into the chamber, I quickly asked the minister’s advisers whether there has been any movement to repeal that act. There was no definitive advice. I suggest that the minister may want to get some definitive advice about this. I understand that the act will remain but there may be some amendments to it relating to definitions of charities.

Let us be clear: the Charities Act 2013, which was operational from 1 June 2014, introduced a statutory definition of charity that applies to all commonwealth legislation. The minister needs to tell us how that applies to the Taxation Legislation Amendment Bill and what impact that will have. I imagine that that means that under the Charities Act 2013, people will get themselves designated a charity and come to the Commissioner of Taxation to be given the capacity to not pay payroll tax or land tax under the acts amended by this bill.

It is interesting that although the Charities Act excludes political parties, it does not exclude unions. This government has decided that, in response to an employer organisation taking a Tea Party stance not to pay tax in a number of areas—to take an absolute free marketeer, non-government, small government stance of not wanting to pay, but it is happy to exert influence because that is how it does it—it will go after people who represent workers and people in the community who are doing it tough.

The federal legislation is based on the principles of common law and assists the not for profits by ensuring clarity and a capacity to determine charitable status.

In his second reading speech, the then federal Assistant Treasurer, Mr Bradbury, the member for Lindsay, said that the Charities Bill came about after a long period. Other speakers talked about that. If we look at the contributions of Senator Xenophon and Senator Stephens to the debate, they said that this has been ongoing since the Industry Commission report in the 1990s and a seminal document, the Productivity Commission report of 2010, which they say laid out the blueprint to modernise the sector and ensure its long-term sustainability. The Assistant Treasurer, Mr Bradbury, also talked about the Productivity Commission recommendation in its 2002 report, and said —

The definition also takes into account the findings of more recent judicial decisions that further clarify the meaning of charity, including the Aid/Watch decision which extended charities’ ability to advance public debate.

Before I go to that decision, I want to talk about the two important decisions that the Chamber of Commerce and Industry of Western Australia relied upon to submit that it was a not-for-profit charitable organisation. The CCI did not do anything that it did not have the capacity to do. We may question the motives of an organisation that is regarded as a lobbyist group and think that those motives are rather odd. We may question the motives of the CCI seeking to influence government debate but not seeking to participate as taxpayers in our community, although it has the capacity to do so. Firstly, it has the capacity on the basis of the case of the Victorian Women Lawyers’ Association Inc v Commissioner of Taxation decided by the Federal Court of Australia in 2008. In that case the court decided the advancement of women on an equal basis with men was of benefit and service to the community. The court rejected the tax commissioner’s objection regarding law reform as not significant. It also dismissed the contention that the association was for the Victorian Women Lawyers’ Association membership directly and only indirectly for women as a whole. The court found that the principal purpose was to remove barriers and increase opportunities for participation by and advancement of women in the legal profession in Victoria, and that such other activities were incidental or ancillary. It is on that case that the CCI began basing its submission for payroll tax exemption and to not pay payroll tax. I recall during a review of taxation under former Treasurer Eric Ripper in the former Labor government that the CCI took that position at that time as well. The CCI therefore sought that exemption subsequent to that 2008 Federal Court decision. It also sought the

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

exemption on the basis of the decision that charities' tax exemption extends to commercial activities and that charities operate not just to seek funds to pay for their charitable activities directly.

It is interesting to note that the application for payroll tax exemption was made on that basis. It was also made on the basis of the Aid/Watch decision, which I referred to previously as one of the reasons for the introduction of the federal Charities Act. The Aid/Watch decision enabled that entity to be a charitable organisation even though it lobbied politically around AIDS and the capacity to get treatment internationally for communities. The Charities Act incorporated the outcome of the decision in *Aid/Watch Inc v Federal Commissioner of Taxation*, which extended the ability of charities to advocate and advance public debate. This legislation before us, therefore, will curtail that capacity because federal legislation for the first time in many hundreds of years has put a statutory definition on "charities" as being for the purpose and benefit of not-for-profit organisations in our community.

For the purposes of Parliament, I want to take members through the definition of "charitable purpose" in the federal Charities Act 2013. It is in part 3, division 1, section 12, "Definition of charitable purpose", and reads —

(1) In any Act:

charitable purpose means any of the following:

- (a) the purpose of advancing health;
- (b) the purpose of advancing education;
- (c) the purpose of advancing social or public welfare;
- (d) the purpose of advancing religion;
- (e) the purpose of advancing culture;
- (f) the purpose of promoting reconciliation, mutual respect and tolerance between groups of individuals that are in Australia;

This is quite a critical issue because it means when Aboriginal people in land and sea councils have to make land right payments they could still be seen as a charitable organisation. That is extraordinarily important for those organisations not to be caught up in a legal argument about whether their organisation's direct and only purpose is for their members, which is their communities. It was absolutely necessary to have those provisions in this act. It goes on —

- (g) the purpose of promoting or protecting human rights;
- (h) the purpose of advancing the security or safety of Australia or the Australian public;
- (i) the purpose of preventing or relieving the suffering of animals;
- (j) the purpose of advancing the natural environment;
- (k) any other purpose beneficial to the general public that may reasonably be regarded as analogous to, or within the spirit of, any of the purposes mentioned in paragraphs (a) to (j);

That sentence also means "connected to". It continues —

- (l) the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country; if:
 - (i) in the case of promoting a change—the change is in
furtherance or in aid of one or more of the purposes mentioned in paragraphs (a) to (k); or
 - (ii) in the case of opposing a change—the change is in
opposition to, or in hindrance of, one or more of the purposes mentioned in those paragraphs.

It then goes on —

- (2) Paragraph (l) of the definition of *charitable purpose* in subsection (1) is the only paragraph of that definition that can apply to the purpose of promoting or opposing a change to any matter established by law, policy or practice in the Commonwealth, a State, a Territory or another country.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

- (3) For the purposes of this section, it does not matter whether a purpose is directed to something in Australia or overseas.

That refers to the Aid/Watch case I was talking about previously.

It is important to recognise that unions could be included in those definitions in this federal act. Political parties cannot be included; they are expressly excluded. Unions that advance health, education and social or public welfare, and promote or protect human rights and unions that promote or oppose change on those issues I have outlined would come within this act. However, this government intends to exclude them from those definitions that are otherwise available to charitable organisations. We are not here debating this legislation because this government minded paying the CCI \$56 million; we are here because on 1 January 2014 the big scary unions were staring down at the government and—my goodness!—they might not have to pay payroll tax. The government does not mind letting employer organisations fit the definition of a charitable organisation at this time. But it does mind suddenly when it realises, “Oh my God! Those people who actually defend the rights of low-paid workers and workers that unions employ might not actually have to pay payroll tax.”

Mr D.J. Kelly: Sprung!

Mr C.J. Barnett: Nice theory but can I just tell you that it’s absolute rubbish. That was not the motivation at all.

Mr D.J. Kelly: It would be interesting to see.

Mr C.J. Barnett: It wasn’t. I’m just telling you it wasn’t.

Ms J.M. FREEMAN: But, Premier —

Mr C.J. Barnett: I won’t interrupt you other than to say that whether it be employer organisations or unions, they should be paying payroll tax, certainly on their business operations; and they both have business operations.

Ms J.M. FREEMAN: Based on those decisions, Premier, if those business operations are ancillary to charitable purposes, yes, they do not have to pay and they still maintain a charitable status.

Mr C.J. Barnett: Yes, they should be.

Ms J.M. FREEMAN: I understand what the Premier is saying. In some ways the Charities Act took that into account as it goes through those areas.

Mr C.J. Barnett: But they’re not charities. We all know that. They’re not charities.

Ms J.M. FREEMAN: I might not disagree with the Premier on that, but I understand that the CCI has been back paid \$56 million.

Mr D.C. Nalder: No. I’m sorry; you said the CCI was back paid \$56 million?

Ms J.M. FREEMAN: Is it \$56 million? How much was it back paid?

Mr D.C. Nalder: No, that is not the CCI. There are a number of others that have come in.

Ms J.M. FREEMAN: All right, minister. Are any of those others that have come forth unions?

Mr C.J. Barnett: I don’t think so.

Ms J.M. FREEMAN: No; that is exactly right. I do not disagree with the Premier, and I will go into that aspect because I think it was outrageous that the Chamber of Commerce and Industry of Western Australia did that. I looked at the law and it had the capacity to do it.

[Member’s time extended.]

Ms J.M. FREEMAN: I agree with the Premier. My background is in the union movement. I do not see that the union movement should have done that without proper capacity. I would be interested to know whether the Western Australian government made any submissions to the Productivity Commission’s report on charities in 2010. That was after the CCI put in its claim, got charitable status and got its piece of that. If it was so important at that time and if it was such a principled issue, did we put something to the Productivity Commission about it at that time? What really gets my goat is that there is nothing in the explanatory memorandum or the second reading speech to tell us about a major change in law in Australia around the Charities Act—nothing. I accept with good grace that that may not have been the point. The issue is that what the CCI did was within its capacity. The government is shutting down it and eight other organisations, but none of them is a union. However, for some reason the government has decided to specifically exclude unions. I understand the point about political parties, because that applies to both sides, but it seems extraordinarily biased and one-eyed to do that for unions.

Mr C.J. Barnett: There was a group of organisations exploiting a loophole in the law. They should not have done that. I am sure that members of the Chamber of Commerce and Industry are highly embarrassed by their

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

actions, and a number of other organisations also should feel very embarrassed. They did not behave in a proper way.

Mr B.S. Wyatt: Is that about the actions in respect of the payroll tax issue?

Mr C.J. Barnett: Absolutely—and I used to run the organisation.

Ms J.M. FREEMAN: Although I accept that it seems very odd and is highly disgraceful that the major Tea Party organisation in Western Australia, the CCI, does not want to pay taxes to the state government but it wants to influence state government policy and programs, I do not see why that should translate into this legislation specifically excluding unions.

I want to answer something else, Premier. The CCI had the capacity under common law to pursue that, and I went through the two common law cases, one of which involved the Victorian Women Lawyers' Association. However, equally, it will still have that capacity under the definition of "charitable purpose". It may be that we will have to come to terms with the fact that the CCI is, in some aspects, a not-for-profit organisation that can fit within the definition of "charity". I note the member for Victoria Park's very good contribution to the debate when he said that, of the \$80 million of the CCI's current revenue, \$65 million is derived from the apprenticeship scheme. I suggest that that is a trading arm. It seems that it can do that with a straight face and is happy to take government money to run the apprenticeship scheme and to make criticisms of the government, but it is not happy to contribute to the taxation system by paying payroll tax, especially when payroll tax is one of the most stable sources of tax revenue for the state.

I want to build on that. Like the Premier, I was pretty galled by the fact that the CCI pursued this action. The member for Victoria Park guided us to *The CCI story: a history of the Chamber of Commerce and Industry of Western Australia and its founding bodies*, so I read it. I note that the Premier was not part of the CCI; he was with the old Western Australian Chamber of Commerce and Industry.

Mr C.J. Barnett: It was different.

Ms J.M. FREEMAN: He was not involved with the amalgamation, but it would be interesting to get his view on that. The foreword to *The CCI story* was written by Harold Clough. As the member for Victoria Park said, it pointed out the work of the members. Mr Clough founded Clough Engineering and is an esteemed contributor to our community. He built what was once the largest bridge of its kind, the Narrows Bridge. I noted his comments at the end of the foreword —

The CCI Story clearly defines the CCI philosophy of freedom—free markets, free trade, personal freedom and minimum government regulation and control. It explains the Chamber's belief in the need for policies that are economically rational (unlike so many government programs that are irrational and uneconomic) and for policies which encourage the wealth creators in society, not the rent seekers.

I wanted talk about that, because I reckon that the CCI pursuing this particular capacity not to pay shows that it is a rent seeker. I thought it was an interesting comment as I had not really heard the term "rent seekers" before, so I wanted to find out what a rent seeker is. I admit that I went to Wikipedia, so I have relied on it for this explanation. It states —

In economics ... **rent-seeking** is spending wealth on political lobbying to increase one's share of existing wealth without creating wealth.

That sounds to me like what the CCI did —

The effects of rent-seeking are reduced economic efficiency through poor allocation of resources, reduced wealth creation, lost government revenue, increased income inequality, and national decline.

Current studies of rent-seeking focus on the manipulation of regulatory agencies to gain monopolistic advantages in the market while imposing disadvantages on competitors.

And it goes on. I thought it was really fascinating that in the foreword to *The CCI story*, it dismisses a group of people it has, through its actions, become.

The CCI is the same organisation that argued in the 2014 state wage submission for a reduction in the state minimum wage, which at the time sat at \$645.90 a week. It argued that the increase should be reduced to one per cent below the consumer price index; it wanted an increase of one per cent less than the rate of inflation. Its argument was that our minimum wage is higher than the national minimum wage, but that argument was despite clear evidence. It often argues that there are differences in WA. It often argues that we have a different set of economic circumstances. It often argues to keep a separate private industrial relations system and takes legal action that shows that we are different. Its argument would have disadvantaged the lowest wage earners in our

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

economy. It wanted to see an effective decrease in wages for minimum wage earners to an increase of one per cent less than CPI.

It is enormously difficult to understand why this legislation focuses on excluding unions and does not give the minister the capacity, as will be done with all the other organisations, to say that, given that unions are recognised under the Charities Act and therefore the provisions under the federal act apply, those provisions for payroll tax and such like should be included. No; it was just a complete and total write-off.

Mr D.C. Nalder: Are you sure?

Ms J.M. FREEMAN: The government will not be able to exempt unions. What the government says with this bill is that —

Mr D.C. Nalder: Unions pay payroll tax today.

Ms J.M. FREEMAN: I know they do; I know they are not like the minister's comrades in the Chamber of Commerce and Industry of Western Australia, which did not want to support this bill. I know unions have not sought exemption, minister; I know they pay payroll tax. I am saying that this bill will make sure that unions will never be able to apply for a tax exemption as a charitable organisation in the future, despite the fact that under the Charities Act 2013, it is quite possible for organisations associated with unions to be found to be charitable organisations. I get the political organisation aspect, but the government is saying that unions will be completely unable to ever make an application to be exempt from payroll tax, despite the fact that a piece of legislation has broadened the definition based on very good law —

Mr D.C. Nalder: It makes sense.

Ms J.M. FREEMAN: No, it does not, minister; it is outrageous to say that it makes sense.

Mr D.C. Nalder: Why?

Ms J.M. FREEMAN: The fact is that unions had an entitlement if they wanted to use it, but they have not used it. They are good upstanding citizens in the community, unlike the minister's employer association comrades. I am saying that with this bill, the government will close down a capacity that is absolutely lawful. It is doing it purposely and discriminating against workers' representatives. The government was happy not to bring this bill in here while it paid its mates. It was happy to keep paying its mates, but as soon as the legislation changed, as soon as there was a threat, as soon as there was a capacity for workers' representatives to come to the government, it has sought to close them down. The government does not want workers to be properly represented and it does not want workers to get what the minister's mates get.

Mr D.C. Nalder: You want them to be classified as a charitable status; that is what you are telling me here.

Ms J.M. FREEMAN: I am saying that under the Charities Act, they had the capacity to apply to the appropriate statutory body for exemption.

Mr D.C. Nalder: You want them to have it.

Ms J.M. FREEMAN: I am saying, minister, that they have the ability but, unlike his mates, they have never actioned that ability. There are eight organisations that will be exempt, none of which are unions.

Mr D.C. Nalder: We are removing them.

MR D.J. KELLY (Bassendean) [10.42 am]: That was a very interesting contribution from the member for Mirrabooka. I am not sure the minister really understands his own legislation, given some of the comments he made during her speech. I might address some of the issues raised by the member for Mirrabooka later in my contribution.

We are told this Taxation Legislation Amendment Bill is effectively designed to close a loophole. The minister might think this is funny, but he is up to his eyeballs trying to explain what he is doing with the airport rail project.

Mr C.J. Barnett: They're building it.

Mr D.J. KELLY: The Premier has just said that they are building it. All I have seen is a press release and a few graphics. I can understand the minister enjoying what he might consider light relief, given the mess he is making on that project.

We are told that this bill is here to effectively close a loophole that has been created by the Chamber of Commerce and Industry seeking and gaining exemption from a number of state taxes such as payroll tax, land tax and transfer duties. We are told that this bill will claw back revenue that has been lost to the state government. I am very surprised the government has taken so long to close this loophole given the state of the

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

state's budget. We have been told that this loophole, exploited by the Chamber of Commerce, has so far cost the state \$56 million in revenue, but I am pleased that the government is finally going to remove that loophole because the budget certainly needs all the revenue it can get. The government has left the state's budget in a perilous state.

Mr D.C. Nalder: Surely you agree it is the right thing to do. It's about what's right; it's not about the money.

Mr D.J. KELLY: From where I sit, I am pleased the government is recovering the money because —

An opposition member: It's not recovering it.

Mr D.J. KELLY: Sorry; it will avoid future lost revenue. The government is not able to recover the \$56 million it has lost but it will close the loophole to avoid future losses. I am pleased the government is doing that because in the budget the government has handed down significant cuts have been made to areas that could certainly do with additional money. I am appalled at the government's decision to reduce funding to the state's high schools. As part of the government's so-called education reform, \$45 million has been taken out of the state's secondary school budgets. Some state high schools have lost up to \$250 000 in this year's budget—\$250 000 out of their school budgets.

Mr C.J. Barnett: What does that have to do with payroll tax?

Mr D.J. KELLY: If we do not collect payroll tax, we cannot fund things like schools, can we? Payroll tax is an essential part of the state's budget. Whether we like payroll tax or not, it is an important element of the state's revenue. If organisations such as the CCI gain an exemption from payroll tax, that will reduce the state's capacity to properly fund things such as schools and hospitals. Through deliberate decisions, this government has, for example, made a decision to reduce the budgets of some of the state's high schools most in need. Two in my electorate are Hampton and Lockridge Senior High Schools, which will both suffer. They will both experience reductions of \$250 000 from their budgets. The minister looks as though he is not aware of this.

Mr D.C. Nalder: I'm very aware. I'm trying to understand the relevance to the bill.

Mr D.J. KELLY: I have just explained it to the minister.

Mr D.C. Nalder: It doesn't make sense.

Mr D.J. KELLY: I will not go back over it for the minister's benefit. The decision to reduce funding to those two high schools in my electorate makes absolutely no sense.

Mrs G.J. Godfrey: Schools in Belmont will be \$500 000 better off.

Mr D.J. KELLY: The member for Belmont says schools in her electorate will be \$500 000 better off. I am pleased for the member for Belmont if she thinks her schools will be better off. If she thinks it is all right to take money from some of the most disadvantaged high schools in the state, she needs to look at herself. This should not be a case of taking money from some schools to benefit other schools. That is an appalling way to approach this. If this government can mount an argument in this place that senior high schools such as Hampton and Lockridge deserve their budgets to be cut by \$250 000, I would like to hear it. The government made comments such as, "We have insulated high schools from the impact of these cuts by limiting the amount they will lose to a maximum of \$250 000 in any one year." That is the government's way of protecting them. I point out to members that Shenton College, in the Premier's electorate, has an annual budget of about \$17 million a year. A \$250 000 reduction to its budget is a much smaller percentage cut than is the case for a school such as Lockridge Senior High School, which has an annual budget of about \$5 million. If Lockridge Senior High School's budget is cut by \$250 000, the percentage cut is three times higher than the percentage cut the government is making to a bigger school such as Shenton College. The way that this government has handled budget cuts to make up, presumably, for revenue lost through loopholes created by organisations such as the Chamber of Commerce and Industry of Western Australia —

Mr C.J. Barnett interjected.

Mr D.J. KELLY: The Premier is a disgrace. I am talking about cuts the government has made to schools such as Lockridge Senior High School, and what does the Premier do? He turns up his nose and whinges like someone who should have retired years ago. If the Premier is not up for this job, if he cannot listen and if he is not interested in the educational offering the Premier is making to people in my electorate, he should go and do something else. The Premier is fond of talking about the time he spends up on the farm, mowing his lawn or baling hay or whatever it is he does. If that is what he wants to do and gives him the most enjoyment, he should go and do it! Absolutely, go and do it.

I would like to get back to the matters I want to discuss about this bill.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

[Quorum formed.]

Mr D.J. KELLY: I am sure part of the motivation to close this loophole is so that the government can shore up its revenue base because of other poor decisions it has made, not just in education. Health is another area. This government is paying Serco \$100-plus million to run Fiona Stanley Hospital even though there are no patients there. Again, that is an appalling decision. Fiona Stanley Hospital should be the jewel in the crown of the public hospital system. The Fiona Stanley Hospital was conceived, planned and funded by the previous Labor government, but it stands idle and we are paying a private company to run and maintain it, even though it has no patients. The only contribution this government made to Fiona Stanley Hospital was the decision to privatise it—and what has that done? It has cost us millions of dollars.

Point of Order

Mr D.C. NALDER: I think there needs to be relevance to the bill. We have heard a rant about education and we are now hearing a rant about health that has nothing to do with this bill. I seek support to keep the focus on the bill.

The ACTING SPEAKER (Mr N.W. Morton): Member, I ask you to make sure that your contribution is focused on the bill that we are debating, which is the Taxation Legislation Amendment Bill 2014.

Debate Resumed

Mr D.J. KELLY: Thank you very much, Mr Acting Speaker.

Members on this side of the chamber support this legislation, because we want to see the state's revenue base secure so that the state can properly fund other line items such as education and health. Under this government, appalling decisions have been made that have diminished the services the state is able to provide in both education and health. It is not only health and education that have suffered under this government—so has public transport. My electorate would not have directly benefited, but Metro Area Express light rail was a government commitment at the previous election, which has disappeared down the plughole. The Bigger Picture advertisements featured the MAX light rail. I am interested to see whether the government will continue to use MAX light rail in its Bigger Picture advertisements.

Mr D.C. Nalder: We still plan to do the MAX light rail.

Mr D.J. KELLY: The minister has just said that they still plan to do the MAX light rail. Is it in the budget? No. Is there a date for it to start? No. Has the government done anything to secure a start date for that project? No.

Ms R. Saffioti: It has done an animation.

Mr D.J. KELLY: I am told it has done an animation!

Mr C.J. Barnett: It puts it ahead of the Ellenbrook rail line then, doesn't it?

Mr D.J. KELLY: The Premier mentioned the Ellenbrook rail line; I had forgotten about the Ellenbrook rail line. That was something else that the government had promised. Then it promised a rapid bus system, and I understand there was an animation for that. The former Treasurer wanted to wrap a bus in plastic so that it would look like one of the new fast buses, but he pulled the idea days before —

Point of Order

Mr C.J. BARNETT: I refer to standing order 94. This member is deliberately talking about everything other than the bill. We would be delighted to debate education, MAX light rail or anything else. The member can bring on a motion and we can debate it, but this debate is about a specific piece of legislation on payroll tax and the advantage taken of a loophole by some organisations.

Mr B.S. WYATT: Further to that point of order, Mr Acting Speaker, the member for Bassendean was responding to a specific interjection from the Premier about the Ellenbrook rail line and, as you are aware, the rules of debate allow members to respond to interjections even though they may be out of order.

Several members interjected.

The ACTING SPEAKER (Mr N.W. Morton): Thank you, members. Member for Bassendean, I remind you to keep your comments relevant to the bill that we are debating.

Debate Resumed

Mr D.J. KELLY: Thank you very much, Mr Acting Speaker.

I will deal specifically—I do want to talk about this—with the decision of the Chamber of Commerce and Industry of Western Australia to seek an exemption from the payment of payroll tax and a number of other taxes.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

I understand it is principally the exemption from payroll tax that it has benefited from, and that the government has said that that loophole was the genesis of this bill. The chamber argued for that exemption on the basis that it claims to be, in effect, a charitable organisation under what is called the fourth limb. As I understand it, the fourth limb applies to organisations that promote other purposes considered beneficial to the community. I recognise that the Chamber of Commerce and Industry does some good things—for example, in the area of training—but given some of the other things the chamber promotes, I find it difficult to support its view that it always acts in purposes beneficial to the community. I think it is an understatement to say that the Chamber of Commerce and Industry’s attitude on a number of issues is mean-spirited. Its attitude to the wages of the low paid in Western Australia is particularly mean-spirited. I cannot recall, for example, a state wage case at which the Chamber of Commerce and Industry of Western Australia came along and argued that the lowest paid in Western Australia deserved a decent pay increase. It usually argues for no increase at all! The member for Mirrabooka pointed out that at the last state wage case it actually wanted a reduction in the state minimum wage, not an increase. I had forgotten about that submission. The CCI is particularly mean-spirited in the way it deals with the lowest paid in Western Australia. It forgets that the lowest paid, whether they are people working in retail or cleaners, are consumers who use their wages in the businesses of Western Australia. Who is it that goes into small businesses and spends money? Low-paid cleaners, for example, would spend every cent in the economy because they struggle to make ends meet. The money goes around when it is put into the hands of low-paid workers. It is really short-sighted of the Chamber of Commerce to always argue that even giving the lowest paid a decent wage increase is —

Mr F.M. Logan interjected.

Mr D.J. KELLY: The member for Cockburn reminds me that at every state wage case the CCI always argues that an increase for the lowest paid is bad for the economy.

I used to represent cleaners. I can tell members that they were not in a position to save lots of money. They were not in a position to spend their money on overseas holidays. They spent every cent of it every week in the Western Australian economy.

[Member’s time extended.]

Mr D.J. KELLY: The Chamber of Commerce always failed to recognise that giving an increase to the lowest paid is actually good for the economy. It takes a particularly mean-spirited attitude to things such as penalty rates. In my experience it has always argued that penalty rates should be removed. I saw yesterday that the CEO of the Chamber of Commerce and Industry of Western Australia, Deidre Willmott, tweeted about the benefits of individual workplace agreements in the 1990s. It may be news to the Minister for Finance, because he was not in public life in the 1990s, but the impact of workplace agreements on a number of industries in the 1990s was catastrophic for the wages of low-paid workers. I will use as an example contract cleaners and contract security guards. They are people who stand outside chemists at midnight and make us feel safe when we go to the late-night chemist or they are people who clean buildings late at night. In the 1990s, those employees almost universally got transferred from an award that had a minimum rate of pay and penalty rates to workplace agreements that stripped their wages back to a base rate of pay that was lower than the award rate, and they lost all their penalties.

The member for Forrestfield might be interested in this because there are lots of cleaners and security guards living in his electorate. The impact of individual workplace agreements on the people in those industries was absolutely catastrophic. At that stage the base rate of pay for a cleaner was about \$11 an hour. If they worked in the evening, they got a 15 per cent loading. Under individual contracts, their pay was stripped to about nine bucks an hour and they lost their penalties, including sick leave and annual leave. It was catastrophic. The CCI is still out there championing what happened to those workers in the 1990s. It is absolutely championing those changes. Those changes were so bad that even the contract cleaning companies at the time were utterly opposed to moving that industry off the award and onto individual contracts. They did not want to do it because they realised their employees would suffer.

Several members interjected.

The ACTING SPEAKER: Members! The member has the right to be heard in silence. I do not mind short, sharp interjections, but repeating them, member for Wanneroo, is not acceptable.

Mr D.J. KELLY: Even the employers did not want to move that industry onto individual contracts; they wanted to stay on the award. These are the people who the CCI was supposed to represent, but it did not. The contract cleaning companies at the time said they wanted to keep their staff on the award. A cleaning company in Queensland saw on the internet that they could bid for contracts in Western Australia on the basis of paying staff \$9 an hour. It was on the basis of that cleaning company bidding for work in Western Australia, and therefore

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

undercutting existing Western Australian businesses, that all cleaning companies had to follow suit because they were losing contracts to that Queensland cleaning company.

Point of Order

Mrs G.J. GODFREY: The member for Bassendean is talking repeatedly about something that happened 20 years ago and is no longer relevant to the legislation.

Several members interjected.

The ACTING SPEAKER (Mr P. Abetz): Members, points of order shall be heard in silence. I would encourage the member for Bassendean to stay focused. There is some relevance—I see that—but try to refocus back on the legislation.

Debate Resumed

Mr D.J. KELLY: Thank you, Mr Acting Speaker. I am addressing the decision that was made by the State Administrative Tribunal to allow, effectively, CCI's charitable status. As many of the other speakers in this debate have also said, I find that decision hard to understand given the CCI's activities on a range of areas. One of them is its particularly mean-spirited attitude to low-paid workers in this state. Contrary to the wishes of the employers in Western Australia, what it did to the contract cleaning industry in the 1990s is one example of that. Member for Belmont, as recently as yesterday the CCI tweeted about the successes of those individual contracts in the 1990s, presumably advocating for their return now. This is not a question of antiquity. There are people in the Belmont electorate now who still remember. When I doorknocked during the 2013 state election campaign, some people raised with me spontaneously what had happened to them in the 1990s. It is a very current issue. I find it very hard to understand that the CCI was successful in its claim for charitable status given its attitude on a range of issues.

I want to mention a couple of other issues about this bill. One of them was dealt with quite extensively during the member for Mirrabooka's contribution; that is, the treatment of unions in this bill. We are told that this bill is a response to the Chamber of Commerce and Industry of Western Australia's application for an exemption from these taxes. This bill is before the house effectively to close the loophole. However, this bill also makes it clear that unions and political parties can never seek exemption from paying these taxes. I do not understand why the minister has chosen to put in this bill additional provisions that relate to unions and political parties. I understand why political parties of all descriptions should be prevented from seeking exemption from paying taxes.

Mr D.C. Nalder: Have your union bosses asked you to ask this question?

Mr D.J. KELLY: Yes. "Union bosses"? The minister said "have union bosses". It is interesting that people on the opposite side of the house try to denigrate unions by adding "boss" after it—"union boss". I know a lot of people do not like their boss. I am sure when the minister was in the ANZ Bank, many people did not like their boss. I always think it is interesting.

Mr D.C. Nalder: Is it union thugs then, not bosses?

Several members interjected.

The ACTING SPEAKER (Mr P. Abetz): Members! The member for Bassendean has the floor.

Ms R. Saffioti interjected.

The ACTING SPEAKER: Member for West Swan, I am on my feet. The member for Bassendean has the floor.

Mr D.J. KELLY: If the CCI's actions were the genesis of this bill, I cannot understand why it contains additional provisions on unions and political parties. Political parties are not a problem; they should never be exempt from paying these taxes. However, people on the other side of the house think that unions are synonymous with political parties. This is their attitude to unions. Because some unions are affiliated with the Labor Party—most unions are not—this government —

Several members interjected.

Mr D.J. KELLY: Mr Acting Speaker, I have only a few minutes left. It is always interesting when we touch a raw nerve in this place.

Several members interjected.

The ACTING SPEAKER: Members on my right, please give the member for Bassendean the time allocated to him.

Ms R. Saffioti interjected.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

The ACTING SPEAKER: Member for West Swan!

Mr D.J. KELLY: The minister needs to explain why he has chosen to —

Ms R. Saffioti interjected.

The ACTING SPEAKER: Member for West Swan, I will call you if you do not desist.

Mr D.J. KELLY: I do not understand why unions have been singled out in this fashion by this minister and this government. I know why; they see unions as being their political opponents and they seek to attack them. Absolutely—that is the only explanation we can come to about this bill. The minister has specifically ensured that unions will never be able to seek an exemption, yet under this legislation the CCI will be able to seek an exemption. The minister clearly does not understand his own legislation. The government really has this savage attitude towards unions. It says it cares about the people whom they represent, but they simply hate the unions. My old union represents aged-care workers. Ninety-nine per cent of people in the community would say that aged-care workers do a fabulous job and they do not get paid enough for the work they do. If we took a poll in the community, we would find that that is what most people would say. What is the organisation that does something about wages for aged-care workers in this community? It is United Voice. No other organisation argues for higher wages for aged-care workers. The CCI certainly does not; the Liberal Party does not; the government does not. The only organisation in Western Australia—I would be happy if the minister pointed out a different one—that argues for higher wages for aged-care workers is the union that represents them, yet this government seeks to attack that union and other unions simply because they are unions. I could go through a raft of other sections of the workforce that people think are underpaid, but it is only the unions that argue for greater pay.

I will finish by dealing with this last point. The minister has now set himself up to be the final arbiter on who gets an exemption. Minister, I think that is incredibly unwise, because every time he makes a decision to exempt somebody, we will come after him with the accusation that he has been influenced by his own political bias. The minister is a fool for setting himself up for that accusation. I am surprised that he would be silly enough to do it by this legislation. If Parliament passes this legislation, the minister has made his bed and he will lie in it.

MR F.M. LOGAN (Cockburn) [11.17 am]: I have been —

Mr J.M. Francis: Give us the metalworkers' point of view.

Mr F.M. LOGAN: Sorry?

Mr J.M. Francis: I am waiting to hear it. Don't let me stop you.

Several members interjected.

The ACTING SPEAKER: Member for Cockburn, if you wish to take the floor, it is yours. I invite you to commence.

Mr F.M. LOGAN: I am appalled by the debate so far in terms of the responses from the minister and some of the backbenchers supporting the minister. I think it is really quite appalling. When the issue has been raised with the minister about the discriminatory nature of this piece of legislation in the fact that unions are specifically named as being unable to be exempted from the application of the tax, the minister not only defends that discriminatory position but does so by stating that the unions have, in his own words, heavy political influence. I hope that when this legislation passes, which it will, action is taken in court to try to strike down this legislation on the basis that it is discriminatory. I hope that those organisations that take action to strike down this legislation go back to *Hansard* —

Several members interjected.

Mr F.M. LOGAN: Mr Acting Speaker, I am not inviting interjections.

The ACTING SPEAKER (Mr P. Abetz): The member does not wish to have any interjections. I call upon you to remain silent.

Mr F.M. LOGAN: I hope that the applicant seeking to strike down this legislation goes back to *Hansard* and looks at the statements made by the minister for justifying these discriminatory provisions. Also, I hope they go back and look at the interjections made in this debate by members of the backbench supporting the discriminatory provisions of this legislation. I hope that occurs, because the minister's own words in this debate support that it is discriminatory against a certain group of organisations in our society. I hope this legislation is struck down by the use of the minister's own words.

Mr D.C. Nalder: Bizarre.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Mr F.M. LOGAN: No, it is not bizarre at all. This Taxation Legislation Amendment Bill 2014 is discriminatory. It highlights only a specific group of organisations that cannot seek exemption from the application of this tax. In the briefing session the minister's advisers indicated to the shadow minister that at least eight organisations would be able to seek exemptions from the application of this payroll tax and the other provisions. I have a list of organisations that would possibly qualify to be among those eight organisations. I would like the minister to tell the house, if he could, what those eight organisations are.

Mr D.C. Nalder interjected.

Mr F.M. LOGAN: Why not, minister?

Mr D.C. Nalder: Because I cannot release that information; it is privileged. It is confidential information that I have no power to release. It's against the law.

Mr F.M. LOGAN: It is not confidential at all. If there are eight publicly registered organisations able to seek exemption from the taxation provisions, that is not confidential information.

Mr D.C. Nalder: Yes, it is.

Mr F.M. LOGAN: No, it is not confidential information. The details of their taxation provisions might be confidential, but not the names of the organisations that are able to seek exemption. For example, from the list that I have, we know one organisation is the Chamber of Commerce and Industry of Western Australia.

Mr D.C. Nalder: Can I respond to this one?

Mr F.M. LOGAN: Go ahead, minister.

Mr D.C. Nalder: Section 114 of the Taxation Administration Act imposes a duty of confidentiality on the commissioner and his delegates. This duty of confidentiality prevents the release of details of taxpayers who are currently in receipt of a charitable exemption and who may be affected by this bill.

Dr A.D. Buti interjected.

Mr D.C. Nalder: It is confidential information. He's asking for details and I can't provide it; no-one can provide it.

Mr F.M. LOGAN: Let us go through a list of possible organisations. We know that the Chamber of Commerce and Industry is one organisation—the minister has already indicated that; therefore, he is probably in breach of the provision he has just read out. I wonder whether the list could include the Pastoralists and Graziers Association of Western Australia, the Australian Medical Association, the Australian Hotels Association and CBH Group, which has been raised. It could be an organisation such as the YMCA or UnitingCare West. It could be any of those, could it not, minister?

Mr D.C. Nalder: I've got no idea.

Mr F.M. LOGAN: The minister would know or he could certainly find out, because he is the minister. It could be the Housing Industry Association or the Western Australian Road Transport Association. I could go through the work that those organisations do and the views that they have expressed not only publicly but also politically. I could even go through some of the work that those organisations do that has a political flavour and their support of certain political organisations. Will they be approved for exemption from payroll tax? Possibly; it will be down to the minister. However, trade unions are specifically mentioned in the legislation and are unable to seek exemption. We have already heard from the minister's own mouth that the reason they are unable to seek exemption is that they have been controlled by union bosses and union thugs—they are the words the minister used—and because of the heavy political influence that they bring to bear.

Mr D.C. Nalder interjected.

Mr F.M. LOGAN: Those are the words the minister used.

Mr D.C. Nalder: I did not say "thugs".

Mr F.M. LOGAN: The minister used the words "union thugs".

Mr D.C. Nalder: I heard someone say it.

Mr F.M. LOGAN: No; the minister repeated it. I sat here and listened to everything that the minister said. After accusing the member for Bassendean of speaking on behalf of union bosses, the minister then said that he meant to say "on behalf of union thugs". That is what the minister said.

Mr D.C. Nalder: I asked a question.

Mr F.M. LOGAN: No; that is what the minister said.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

The ACTING SPEAKER (Mr P. Abetz): Members, I do not think this is productive, so let us skip the interjections and focus on the bill.

Mr F.M. LOGAN: We are talking about exemptions denied to unions by this government and the minister because it is their view they are controlled by union bosses and union thugs, and to use the minister's words again, "heavy political influence".

Mr D.C. Nalder: So you want unions to have charitable status; is that what you're saying?

Mr F.M. LOGAN: They probably will get charitable status if this legislation applies to them. However, this government is specifically discriminating against trade unions to ensure that they cannot get exemption under these particular taxation provisions in Western Australia. Meanwhile, we know that at least eight organisations will automatically get exemptions. The minister will not tell the house who they are, but I am sure, if we knew who they were, we could go back and have a look at the political statements they have made over the years. The Chamber of Commerce and Industry of Western Australia is an obvious one; we know it has an exemption. Over the years, the Chamber of Commerce and Industry has made, and continues to make, numerous political statements about government policies and directions; it uses its organisational power to lobby politically. This is the professional organisation that the minister was laughing about.

Mr D.C. Nalder: This is a Taxation Legislation Amendment Bill, so they will now pay payroll tax.

Mr F.M. LOGAN: We will see whether the minister gives the CCI an exemption or not, along with the other seven organisations. I hope that once this legislation passes, as we know it will, that the organisations it will affect will take legal action against the government and seek to strike the legislation down on the discriminatory manner in which it excludes particular organisations from seeking exemptions—trade unions being one of them. I hope they do and that the applicants in that legal case go back to *Hansard* and the statements made by this minister and various backbenchers in this debate to support the action and the claim that this piece of legislation absolutely discriminates against some of the finest organisations in our society that have created what our society is today. People are well paid with good conditions in our society because of the work of trade unions. There is no denying that. If the minister goes back and looks at history and all the award cases and work done in industrial relations over the last 100 years, he will see that Australians and Western Australians have good, safe working conditions because of the work of trade unions. One of the most respected Liberal Premiers and senior ministers in Western Australia would have supported everything I have said. Sir Charles Court was a lifelong member of a trade union. He would not have stood here and bagged trade unions. He understood the reasons for trade unions. He was a lifelong and proud member of a trade union. That flies directly in the face of some of the comments made by the Minister for Finance.

MR D.C. NALDER (Alfred Cove — Minister for Finance) [11.29 am] — in reply: I thank members opposite for their contribution to this debate. I thank them in general for their support of the Taxation Legislation Amendment Bill 2014. I note that the opposition's primary concern centres around the powers of the Minister for Finance, in concurrence with the Treasurer, to make exemptions. I will cover that further in consideration in detail.

The member for Victoria Park asked some specific questions. I am trying to find my response. If I cannot locate it in time, I will defer that to consideration in detail as well.

Mr B.S. Wyatt: It was with respect to section 41 of the Pay-roll Tax Assessment Act.

Mr D.C. NALDER: I have a proper response for the member and I wanted to make sure that I quoted it correctly. I will defer that to consideration in detail and give a proper response at that time. I have notes on it here somewhere.

This bill has come about as a result of an organisation that everybody knows because it has been in the public forum—the Chamber of Commerce and Industry of Western Australia—claiming charitable status. This bill is not designed to question organisations claiming charitable status. All it is designed to do is impose a public interest test of whether they should be exempt from the various duties and taxes that we believe they should be responsible for paying to support the broader community. We will go into consideration in detail. I will respond further to the questions and ensure that I cover as many of the queries as I possibly can.

Question put and passed.

Bill read a second time.

Leave denied to proceed forthwith to third reading.

Consideration in Detail

Clause 1: Short title —

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Mr B.S. WYATT: I want to ask a quick question. As the minister is no doubt aware, clause 1 allows a couple of quick general questions that were featured in the second reading debate. Can the minister confirm what was advised to the opposition during our briefing, that as a result of a decision by the State Administrative Tribunal, some \$56 million in taxes—payroll tax, land tax and transfer duty—has been reimbursed to eight different organisations? Of that \$56 million, could the minister provide us with the breakdown of payments? I do not want the name, just the breakdown of payments made to those different organisations.

Mr D.C. NALDER: The breakdowns are obviously not by organisation but by payroll tax, transfer duty and land tax. Of the \$56.633 million, payroll tax is \$50.793 million, transfer duty is nearly \$125 000, and land tax is \$5.7 million. I am rounding off the figures.

Mr B.S. Wyatt: Can the minister break down the payments made to organisations without naming the organisation?

Mr D.C. NALDER: I cannot do that. Under section 114, I think, of the tax act, I am not allowed to.

Mr B.S. Wyatt: Can the minister confirm that section for me?

Mr D.C. NALDER: Section 114 of the Taxation Administration Act 2003 imposes a duty of confidentiality on the commissioner and his delegates. This duty of confidentiality prevents the release of details irrespective of taxpayers who are currently in receipt of charitable exemptions and who may be affected by this bill.

Mr B.S. WYATT: The point I want to make is exactly the point made by way of interjection by the learned member for Armadale. The minister is not the commissioner's delegate; he is the minister. That section does not apply to him or the Parliament, in my view. I understand the sensitivities. I am not requesting the names of organisations. We know one, of course, pursuant to the SAT. That would not bind the minister as a minister of the Crown. Again, I am not seeking the names of the organisations to which those payments were made.

Mr D.C. NALDER: We do not have the information about the individuals. I assume that is what the member wants.

Mr B.S. Wyatt: I want the value. For example, X Pty Ltd was paid this and Y Pty Ltd was paid that. I am not looking for the names.

Mr D.C. NALDER: I do not have that to hand at all.

Mr B.S. Wyatt: Are you able to get that information?

Mr D.C. NALDER: Yes, we will be able to, but not by name.

Mr B.S. Wyatt: Can you clarify that you will provide that information to me without naming the organisations?

Mr D.C. NALDER: I will provide that.

Dr A.D. BUTI: Further to that inquiry by the member for Victoria Park, the minister referred to section 114 of the Taxation Administration Act. Subsection (3) states —

This section does not prevent —

Then it sets out when information can be disclosed. Paragraph (c) states —

the disclosure of information or material to —

- (i) an officer of the department of the Public Service principally assisting the Minister to administer this Act;

The minister may not have been the minister responsible for that act, but he is now because, by the amendments that he has put in place, he will be responsible. He is the minister responsible. Therefore, he cannot stand up in this place and say that he is prevented by the duty of confidentiality from disclosing that information. He can disclose that information. I think his defence has been shot down.

Mr D.C. NALDER: Generally, the commissioner cannot legally provide me with the details of these individuals. Only on an application for reinstatement may he provide specific details of an individual.

The ACTING SPEAKER (Mr P. Abetz): Member for Armadale, I am a little concerned as to whether this is really to do with the general nature of the bill under clause 1.

Dr A.D. BUTI: Mr Acting Speaker, you have allowed questions; you can hardly cut it off during the debate.

The ACTING SPEAKER: I have allowed it, but it was borderline. If you can wrap it up, I will allow one more question, but then I am going to rule that I will put the clause.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Dr A.D. BUTI: I do not think the answer that the minister just gave addresses the issue under the Taxation Administration Act. The act is quite clear in section 114(3)(c) about the duty of confidentiality. It does not say that the commissioner cannot give the minister X, Y and Z. It states to whom the section does not apply, and it does not apply to the minister.

Mr D.C. NALDER: I have to beg to differ on that at this point based on the advice that I have received.

The ACTING SPEAKER: Member for Armadale, the minister has agreed to provide the information that the member for Victoria Park asked for in his question. He does not have it now and says he will provide it later. That therefore deals with the member for Victoria Park's general question. I do not believe that pursuing the interpretation of a section in another act is germane to clause 1 of the bill, which is that the short title be the Taxation Legislation Amendment Act 2014.

Dr A.D. BUTI: But, Mr Acting Speaker, it is germane to the question asked by the member for Victoria Park that you allowed.

The ACTING SPEAKER: That has been dealt with.

Dr A.D. BUTI: No, it has not really. What sort of information will be provided?

The ACTING SPEAKER: It is the information that was asked for by the member for Victoria Park. The minister has indicated that he does not have that information here with him and that he will provide that information directly to the member when it becomes available to him from his department—end of matter.

Dr A.D. BUTI: End of matter, is it? I would just like to give some advice to the minister that he should not be using sections in acts that are not relevant to his argument.

Ms R. SAFFIOTI: I pick up on a comment made by one of my colleagues during the second reading debate. The minister said that he would pick up at the consideration in detail stage a lot of the issues raised during the second reading debate. I want to alert the chamber to the fact that there was not a very comprehensive response given in the minister's second reading reply on the basis that many of the issues picked up by members on this side during the second reading debate would be addressed in consideration in detail. One of the issues raised was about the timing of this legislation, and I ask: why was it not prepared earlier in consideration of the impact it would have on the state's finances?

Mr D.C. NALDER: The reasons for the delay are that the government was made aware of the implications of the Chamber of Commerce and Industry of Western Australia's case immediately following the decision.

Ms R. Saffioti: I am sorry; was that in July 2012?

Mr D.C. NALDER: Yes, that is right. At that time it appeared that the proposed commonwealth reforms to the not-for-profit sector might inform the state's position and provide a viable model to address the implications of that decision. The commonwealth reforms included establishing a commonwealth regulator for charities, legislating a statutory definition of charity and limiting commonwealth tax concessions in certain commercial activities of charities. The commonwealth was aiming to introduce legislation in the first half of 2013; however, these reforms were continually delayed, with some ultimately being discontinued. Once it became clear that the commonwealth reforms would be significantly delayed, the government moved to progress the amendments separately. The area of charitable law is very complex. Several options were developed because a workable legislative scheme was identified that could effectively exclude only a narrow band of fourth-limb charities that the government was seeking to exclude from receiving state tax exemptions. Hopefully, that provides a detailed response for the member on that issue.

Ms R. SAFFIOTI: It does, and I am glad the member for Mirrabooka made that contribution this morning, because it goes to the core of this issue; that is, there was a significant delay in introducing this legislation, even though the government was taking a financial hit and the CCI was continuing to get an exemption from taxes that we all agree should be paid. Surely some advice was given to government to act quicker, particularly by the Department of Treasury. I cannot see Treasury wanting to sit back and allow millions of dollars to walk through the door while the government was considering what was happening in the commonwealth Parliament.

Mr D.C. NALDER: I will provide some additional information. A lot of the funds that have been returned were based on applications prior to the CCI decision—\$55 million of the \$56 million.

Mr B.S. Wyatt: Just to clarify that, \$55 million of the \$56 million that was reimbursed was reimbursed prior to the State Administrative Tribunal decision.

Mr D.C. NALDER: It related to applications prior to the decision of the tribunal. Applications had been made prior to the decision of SAT. A number had applied, SAT made a decision and then that has been applied.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Mr B.S. Wyatt: Presumably, then, the commissioner made the same decision and said no. Then they all waited on the SAT decision, and as a result they were all paid.

Mr D.C. NALDER: Yes. As I explained, we were waiting for the commonwealth so that we could work with the commonwealth on a solution. That has taken too long. We decided to proceed. That is the primary reason for the delay. However, we also wanted to ensure that we thought this through properly so that we captured all areas, and we did not rush one and find that we had to revisit it over and over again. We tried to make sure that we did this once and did it correctly.

Ms R. SAFFIOTI: What has been described in the information just provided to Parliament is that \$55 million of the \$56 million that was reimbursed to the eight organisations applied to the time before the SAT decision. Am I right to say that between July 2012 and today, there has been only \$1 million of additional tax liable?

Mr D.C. NALDER: Yes, an additional \$1 million has been refunded to date.

Ms R. SAFFIOTI: So, \$55 million was refunded prior to 2012.

Mr D.C. Nalder: Yes, for applications made prior to that.

Ms R. SAFFIOTI: Yes, sure. How much tax has been waived since 2012 to now?

Mr D.C. Nalder: An additional \$1 million.

Ms R. SAFFIOTI: Is that it?

Mr D.C. Nalder: I am sorry; the refunded amount is \$56 million.

Mr B.S. Wyatt: How much has been forgone?

Ms R. SAFFIOTI: Yes, exactly.

Mr D.C. Nalder: I am sorry, how much?

The ACTING SPEAKER: Through the Chair, please! Please, for the sake of the people operating the cameras, we need to maintain some semblance of order, so through the Chair, thanks.

Ms R. SAFFIOTI: I am sorry. So, \$56 million was refunded, and \$55 million applied to the time prior to 2012 and \$1 million post-2012. How much has been forgone is the question?

Mr W.J. Johnston: No. The \$1 million was refunded for actions before SAT.

Ms R. SAFFIOTI: Yes, but what I am trying to find out is —

Mr D.C. Nalder: What is there since?

Ms R. SAFFIOTI: Let us pocket the \$56 million—we will not pocket the —

Mr D.C. Nalder: What's in the pipeline.

Ms R. SAFFIOTI: What was the amount that those eight organisations would have otherwise paid since July 2012? It is huge.

Mr D.C. NALDER: It is potentially up to \$10 million in payroll tax. That is the best advice I have to date.

Ms R. SAFFIOTI: Obviously, in relation to duties, significant transactions might have been undertaken but they were exempt. We know it is potentially \$10 million because the government knows the likely payrolls of some of these entities. In relation to duties, the government may not know. Those transactions might have been undertaken, but because they were not taxable, the government was unaware of them. Is it likely to be more than \$10 million or is \$10 million the likely total amount?

Mr D.C. NALDER: We would be aware through the exemption process when they applied for the exemption. That is when we would have been aware of any amount outstanding.

The ACTING SPEAKER: Member for West Swan, I am just wondering whether the subject matter you are dealing with is perhaps dealt with more fully in part 4. Clause 12 onwards actually deals with that. That might be more appropriate. I am happy to allow a couple more questions, but if you want to go into the real detail, perhaps we could leave that until we deal with part 4.

Ms R. SAFFIOTI: This is just about the nature of when it started and the total amount.

Mr B.S. WYATT: I have one follow-up question to the answer that the minister just gave. In respect of the \$10 million forgone, we know that there was a reimbursement to eight different organisations. I am trying to get an idea of the size of the pool of organisations that we are talking about. We know that eight were reimbursed,

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

but is the \$10 million forgone just from those eight organisations? Eight organisations effectively applied, but what is the size? Are there potentially 50 or 60 organisations that might otherwise be impacted?

Mr D.C. NALDER: Our understanding is that it is a small number, and we are anticipating in the vicinity of up to 20 organisations.

Ms R. SAFFIOTI: Can I confirm that, in relation to the exemption that the Chamber of Commerce and Industry of Western Australia sought, all-up the amount of taxpayer dollars that the state has lost is at least \$66 million?

Mr D.C. NALDER: It is not so much that the state has lost it; these people have applied under the exemption and have been granted that status, so \$56 million has been refunded. There is retrospectivity. I understand that they have applied retrospectively for up to five years, so the \$56 million applies to a five-year period.

Ms R. SAFFIOTI: I just want to make sure that I understand this point. The amount of \$56 million was up to 2012, but since then \$10 million in revenue has been lost. So, if this legislation had been in place five years ago, we would have collected \$66 million more.

Mr D.C. NALDER: Yes. If this fourth limb had not been determined in the way it has been, we would not have refunded those funds so, yes, the amount that has been refunded would have been kept by the Office of State Revenue.

Mr W.J. JOHNSTON: In the second reading debate, I asked a couple of questions and I was not in the chamber when the minister gave his reply. I am sorry about that.

Ms R. Saffioti: It was very short.

Mr W.J. JOHNSTON: I understand that it was very short, which is probably why I missed it. My colleague the member for Armadale tells me that the minister did not answer the questions I asked. I would like to know: When did the Commissioner of State Revenue raise the need for legislation with the government? When was the first occasion that cabinet made a decision that legislation was necessary? What was the date of approval to proceed to draft the legislation? What was the date that the draft legislation was first returned to the relevant minister? They are the questions that the minister said he was going to answer.

Mr D.C. Nalder: Yes, I will respond.

Mr W.J. JOHNSTON: Thank you.

Mr D.C. NALDER: When did the Commissioner of State Revenue notify the minister of the decision and the need for the amendments? The Commissioner of State Revenue notified the then Minister for Finance of the potential implications of the Chamber of Commerce and Industry decision on 19 July 2012, the day after the decision was delivered by the State Administrative Tribunal and again on 15 August 2012 following the decision not to appeal the decision. As the Treasurer is responsible for taxation policy matters, the minister advised the then Treasurer of the implications of the decision on 17 August 2012. With regard to the member's question about cabinet, this information cannot be released as it is cabinet-in-confidence.

Mr W.J. Johnston: That's not true.

Mr D.C. NALDER: It is true. When was the first draft of the bill received? It was received on 13 March 2014. Why is it necessary to expressly exclude political parties and trade unions? Although political parties and trade unions are not currently regarded as charitable organisations, the concept of a charity is evolving, with the courts continuing to expand the definition. It has been speculated in the press that there is scope that the law may evolve to include unions. For this reason, political parties and trade unions have been expressly excluded from the exemption. There is no ability to reinstate their exempt status in the event that in the future they are determined to be charitable.

Mr W.J. JOHNSTON: I think the minister has misunderstood my question. I have not asked about cabinet deliberations, which of course are confidential; I have asked about cabinet decisions. I make the point that cabinet decisions cannot possibly be secret; otherwise, ministers would not be able to hold media conferences to explain a decision of cabinet, because that would be breaking the cabinet confidentiality rule. That is not what happens. I remind people of this concept: if what the minister is saying is true—that is, he cannot tell us when decisions of cabinet were made—the Premier would have breached those rules.

I make the point—I am happy to provide the minister with an audio transcript—that the Premier held a press conference in May 2009 to explain that cabinet had just made a decision to proceed with the Muja AB project. If the Premier was able to hold a press conference in May 2009 to say that cabinet had just made a decision to proceed with the Muja AB refurbishment, I am not quite sure how cabinet confidentiality was not applied on that occasion. How is it that the minister uses cabinet confidentiality to refuse to answer a question not about the deliberations of cabinet, but about the date of a cabinet decision, yet the Premier—I am happy to provide the

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

audio to the minister, because I have the audio on my laptop; in fact, it is on the Premier's website if the minister does not want it from me—can hold a media conference to talk about a cabinet decision? The Premier has clearly set the standard for cabinet that it is okay to say when a decision is made, but the minister is not prepared to provide the same information to the Parliament of Western Australia that the Premier was prepared to talk about in a media conference. I do not understand the standards of this government. The Premier can do something in a press conference, but the minister cannot in the Parliament of this state. Where are the standards of this government? Is the standard so low that this government is prepared to hide decisions from Parliament but allow the Premier to hold press conferences and talk about the same thing? If the minister is telling me that he cannot answer my question because of cabinet confidentiality, should we refer the Premier's behaviour to the Corruption and Crime Commission for breaching cabinet confidentiality? Tell me what the standard of this government is. Is the minister prepared to tell the truth in this chamber or not? Is he prepared to answer a very simple question? What was the date that cabinet first made a decision that legislation was necessary and what was the date of the approval given by cabinet to draft the legislation? I am not asking what were the discussions in cabinet; I am asking what was the decision of cabinet—the decision that the Premier was happy to stand in a media conference and talk about, but somehow the minister is now suggesting has become a secret.

Mr D.C. NALDER: I stand by my comment that I will not release those dates. I want to try to help the member for Cannington, because I am trying to understand the basis of the question. I think it is more around why there was a delay. He might have been out of the chamber when I explained.

Mr W.J. Johnston: No, I am not asking that. I am asking when the decision was made. It is a pretty simple question.

Mr D.C. NALDER: It is confidential and I am not releasing it. That is the answer that I can give on this.

Mr W.J. JOHNSTON: We know why the minister will not answer this question.

Mr D.C. Nalder: Why?

Mr W.J. JOHNSTON: It is because of the deep embarrassment of the government that it took no action for months and months.

Mr D.C. Nalder: That's what I was just trying to explain to you.

Mr W.J. JOHNSTON: This is covering up incompetence. The minister has already told us that the government was advised in August 2012 that legislation was necessary, yet the government did not take action until June 2014.

Mr D.C. Nalder: I think you were out of the chamber when I responded to that.

Mr W.J. JOHNSTON: No, minister. I know what the minister said; I was in the chamber when he explained what the commonwealth was doing, and all that stuff, but that is not the point. The point is pretty simple. In August 2012 the Minister for Finance was told by the Commissioner of State Revenue that legislation was required.

Mr D.C. Nalder: Yes.

Mr W.J. JOHNSTON: Cabinet, for whatever reason—I do not give a damn; I am not interested in what happened in cabinet. The minister is telling me that cabinet deliberated on commonwealth legislation and talked about stuff, but I have not asked about that because if he told me, he would be breaching confidential cabinet discussions. I am not interested in cabinet's deliberations; I am interested in cabinet decisions. Cabinet got the recommendation from the minister, which must have been sometime after August 2012, and that is why I asked: what was the first occasion cabinet made the decision that legislation was necessary? It is not a particularly unusual question because we can see that state cabinet has been wilfully incompetent. As I said, I do not want to know about the deliberations in cabinet, so do not tell me what considerations were important to cabinet because that would breach cabinet confidentiality. I am not asking about that; I am asking about the date the decision was made. I do not understand why the minister is prepared to talk about what cabinet considered, which is of course confidential, but he is not prepared to talk about on which date cabinet decided, which is not confidential.

Mr D.C. NALDER: I reiterate that it is confidential. However, the point the member for Cannington clearly raised was that he was trying to articulate the challenges between the time we were informed of the implications—not the need to pass legislation—which is what I provided, and our being here today dealing with the legislation. I have explained that. If he wants me to repeat that —

Mr W.J. Johnston: No; I want you to answer the question.

Mr D.C. NALDER: I am trying to help.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Mr W.J. Johnston: I do not want to know what happened in cabinet; I want to know the date of the decision.

The ACTING SPEAKER (Ms J.M. Freeman): The minister has the floor.

Mr D.C. NALDER: The member has said he wants these dates because we will be embarrassed over such a delay, but I have explained the reasons for the delay. I have told the member they are confidential, but I am not sure what benefit he will gain. I have explained the reasons so I do not know what else he wants from this point.

Mr W.J. JOHNSTON: Madam Acting Speaker —

The ACTING SPEAKER: Member for Cannington, I hope it is not a repetitive question. This will be the fourth time you have been on your feet. The question needs to be put and not be repetitive.

Mr W.J. JOHNSTON: I was not in fact intending to ask a question; I was going to answer the minister's question.

The ACTING SPEAKER: It is for you to ask a question.

Mr W.J. JOHNSTON: It is for me to clarify the issues raised in consideration in detail, and this is my opportunity to do that, thank you very much, Acting Speaker.

The minister asked what I am trying to get at. I am trying to get at the fact that the cabinet decision was probably made sometime in late 2012. After cabinet made the decision to endorse the recommendation from the Commissioner of State Revenue, it followed a different process. Cabinet wandered around the country and delayed the legislation. It was not that it did not know to take action, nor that it had not made a decision to take action. In fact, I think cabinet decided to act reasonably soon after the Commissioner of State Revenue told cabinet it needed to take action. The problem is that even after cabinet made the decision that it needed to take action, which is exactly what the Commissioner of State Revenue told it in July and August 2012, cabinet then delayed. That is the problem I have. I bet the answer to my question is that about October 2012 cabinet made the decision that legislation was required, but the decision to draft legislation was made a year later. That is what I am getting at. There was a delay, not because of the stuff the minister has raised in here now; those issues came up after the cabinet decision. I bet the minister \$100 that I am right. I do not believe any competent cabinet would have got the information from the Commissioner of State Revenue in July and August 2012 and then done nothing about it for two years. That is incomprehensible. Cabinet would have made a decision at the time. Any competent cabinet would have done that. If it did not, that is another issue, but after cabinet made the decision to draft legislation, it then delayed. That is why we need to know these dates. I bet the minister \$100 that almost a year passed between when cabinet decided it needed legislation and when approval to draft was given. That is what I am trying to find out. When did cabinet decide it needed to do something and when was something actually done? That is why it is important and that is why the issues the minister has raised do not have any relevance to the questions I have asked. I am not asking about cabinet considerations; I am asking about its decisions. Cabinet hides these decisions when there is no reason under the Westminster system that it cannot answer my questions.

Mr C.J. Barnett: Yes, there is.

Mr W.J. JOHNSTON: No, there is not; otherwise the Premier would be in jail. If he was correct about what he has just said, he would be in jail.

Mr C.J. Barnett: The release of cabinet information is at the discretion of the Premier of the day.

Mr W.J. JOHNSTON: The Premier does not know what he is talking about.

The ACTING SPEAKER: Member!

Mr C.J. Barnett: Yes, I do. The release of cabinet information is at the discretion of the Premier of the day.

Mr W.J. JOHNSTON: Oh, right! It is at the discretion of the Premier! Thank you for agreeing with me, Premier; I love it when the Premier agrees with me! As I say, the reason the minister will not answer my question is not because of cabinet confidentiality —

Mr C.J. Barnett: Yes, it is.

Mr W.J. JOHNSTON: — it is because the Premier is embarrassed by the answer. The answer is that cabinet decided to take action reasonably soon after the Commissioner of State Revenue told the government there was a problem, but cabinet did not take any action for more than a year. That is why we lost \$10 million. I accept the loss of \$56 million because that was due to how the law worked. But this government gave away \$10 million to eight organisations because it did nothing for 12 months. We know that is exactly why the Premier will not answer the questions. He is very embarrassed that the government gave away \$10 million of taxpayers' money because he was not prepared to do any work.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Ms R. SAFFIOTI: I want to follow this point briefly. This is a very significant question. The government was advised in 2012 that millions of dollars were going through the door to these organisations that the entire Parliament believed were not charities and the government did not act. To be blunt, we understand that these organisations are very close to this government and the Liberal Party. Significant questions have been raised here. Let us face it, if the Labor Party had given \$10 million to the union movement over 12 months without bringing in legislation, a royal commission would be looking into it. Professional bodies close to a particular party have received benefit because legislation has not been brought into this place. It is a significant issue.

My question relates to Treasury advice, because, surely, Treasury would have requested that this legislation be brought in as soon as possible to try to stop the flow of money from the government to these organisations. When was Treasury first alerted to the fact and what advice did Treasury provide to the government about rectifying the issue?

Mr D.C. NALDER: I repeat what I said in response to the member for Cannington that the then Minister for Finance was advised on 19 July 2012, the day after the decision, and again on 15 August when the decision was made not to appeal the decision. As the Treasurer is responsible, the minister advised the then Treasurer of the implications of the decision on 17 August 2012.

Ms R. SAFFIOTI: Why is the treatment of this legislation so different from the treatment of the waste avoidance and resource recovery levy legislation handled three or four weeks ago when an impending decision by the courts would have left a hole in the state's finances? With the opposition's agreement, legislation was rushed into Parliament and everything stopped to deal with that legislation, which was introduced in this place, passed and dealt with in the upper house within, I think, a week. Why was that dealt with so differently even though there were complex issues also in that situation? Why, given the strong leakage of revenue from the state, has this legislation been dealt with differently from that WARR legislation?

Mr D.C. NALDER: Again, I am going over the same ground—\$55 million was already gone. We were monitoring the commonwealth regulations in trying to ensure that we did it properly, and did it once. Because that reform was underway at the commonwealth level, we wanted to make sure that we tied it in there. We decided that it was taking too long and was not proceeding. We did not want to wait any longer, hence we have proceeded. That is the basis of it. The member knows that I am new; I have not seen anything that suggests there has been any untoward activity in here. If that is what the member is insinuating, I cannot respond to that.

The ACTING SPEAKER: Member for West Swan, we are on the short title so we need to keep to that.

Mr B.S. Wyatt: I thought we were on "Commencement".

The ACTING SPEAKER: I understand that we are on clause 1.

Ms R. SAFFIOTI: From the briefing notes, is the minister aware of receiving any advice prior to the conclusion of the State Administrative Tribunal determination about this issue prior to July 2012? Obviously, the commissioner might have been confident about the government's position. Was any advice or briefing provided to the government at the time about the possible implication of a negative decision at SAT?

Mr D.C. NALDER: I have not received any advice. I have not seen that there was any advice beforehand. I cannot categorically rule that out, but I have no evidence to suggest that there was any advice prior to the decision handed down by SAT.

Mr B.S. WYATT: The minister said he would respond to my question about proposed section 41. Perhaps now is a good time to deal with that.

Mr D.C. NALDER: Sure. This is regarding section 40(2)(n). I will repeat the question so that we have it on *Hansard*, and then the response to it.

Mr B.S. Wyatt: We might be doing two different things; but go on.

Mr D.C. NALDER: I have section 40(2)(n) and 41(2). Does the member just want me to deal with section 41(2)?

Mr B.S. Wyatt: Both. Give the answer and I will come back to the minister.

Mr D.C. NALDER: The member for Victoria Park sought clarification on the technical application of section 40(2)(n) of the Pay-roll Tax Assessment Act. It is stated at section 40(2) —

For the purposes of subsection (1)(a), wages paid or payable during an assessment year are exempt from pay-roll tax if the wages are paid or payable —

...

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

- (n) by a charitable body or organisation exempted under section 41 for doing work of the kind ordinarily performed in connection with a charitable purpose for which the body or organisation is established or carried on; or

The member for Victoria Park stated that an exemption suggests that only wages paid by a charitable organisation in relation to the charitable purpose for which it is established are exempt from tax and therefore wages not connected to this purpose are subject to tax. The member noted that Judge Chaney made similar comments in the Chamber of Commerce and Industry of Western Australia case. My response is: in a decision made on 3 December 2008 in the case of Commissioner of Taxation v Word Investments, the High Court of Australia determined that funds generated by an organisation to allow it to pursue its charitable purpose are also charitable. The exemption therefore extends to wages that are indirectly connected to the charitable purpose for which an organisation is established.

With regard to the question about section 41(2), section 41, “Exempting charitable bodies or organisations”, states —

- (1) A charitable body or organisation may apply to the Commissioner for exemption from liability to pay-roll tax.
- (2) The Commissioner may, by giving notice to the charitable body or organisation, exempt it from liability to pay-roll tax.

The member suggested that the use of the word “may” in subsection (2) makes it open to the commissioner not to approve an application by a charitable organisation for an exemption. My response and the advice that I have received is that in the context of the provisions, the word “may” means “shall”. This was confirmed in a decision by the Supreme Court of Western Australia on 17 December 1987 in the case of University of Western Australia v Commissioner of State Taxation (WA).

Mr B.S. Wyatt: That was dealing specifically with that section, was it?

Mr D.C. NALDER: The Stamp Act.

The decision related to a corresponding exemption in the Stamp Act. In that context, the court determined that the word “may” is not used to give a discretion but to confer a power on the commissioner that must be exercised in the event that the matter that gives rise to the exemption is satisfied. In other words, if an organisation is charitable, the commissioner cannot refuse an application for exemption.

Clause put and passed.

Clauses 2 and 3 put and passed.

Clause 4: Section 3 amended —

Dr A.D. BUTI: The minister has prescribed at proposed section 3 a number of bodies to be inserted, in alphabetical order. The first one in the list states —

political party means a body or organisation, whether incorporated or unincorporated, having as one of its objects or activities the promotion of the election to the Parliament of the Commonwealth, or to a Parliament of a State or Territory, of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;

What about other political organisations such as the West Australian Voluntary Euthanasia Society? I mentioned a famous New Zealand case during my second reading contribution. It was an anti-abortion organisation that was held not to have charitable status because it was political in nature. The minister’s definition of “political party” would not take up those sorts of organisations. I do not see that they would necessarily come under the other body, a “professional association”. Those organisations are not professional associations seeking to promote the interests of their members in any profession. They do not come under “trade, industry or commerce”. They are not a “relevant body” provided under section 96A and they are not a “trade union”. That is my first question, and I have a follow-up question.

Mr D.C. NALDER: To clarify: “political party” refers to only those that nominate members to stand. It does not refer to lobbyist groups. They are not caught up in these amendments, as the member says.

Dr A.D. BUTI: These proposed amendments to the act are to make it clear to Parliament that these bodies will not be able to gain an exemption. Before I go on to the second part of the question, is it true that these bodies that are named in this clause are there because the minister determined that they should not receive any exemption?

Mr D.C. Nalder: That is correct.

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

Dr A.D. BUTI: What about organisations such as the West Australian Voluntary Euthanasia Society or any anti-abortion movement, or pro-abortion; I am not picking sides? The minister said, in response to questions about why trade unions are listed, the courts said that the fourth limb may expand. Why has the minister seen fit to prescribe trade unions as a body that would not be able to be subjected to any discretion on the part of the minister but other political organisations could come under the minister's discretion? I find it quite amazing that the minister would prescribe that trade unions are definitely not to receive exempt status and therefore cannot benefit from the discretion of the minister, but other organisations that are purely political could if the minister of the day determined them to have a public interest. We will get to that later. All it states is that the minister has to determine that it has a public interest. There is no definition whatsoever of "public interest". These other bodies that are not prescribed in clause 4 of this amendment bill would have the benefit of possibly having an exempt status under this legislation. My questions are: Why is the definition of "political party" in the bill so limited? Why are trade unions prescribed as not having an exempt status, but other much more political bodies are allowed to have the possible benefit of the minister of the day using his or her discretion to determine that they have an exempt status?

Mr D.C. NALDER: Just to clarify, there is a restriction on those organisations that can seek exemptions from the minister. It is organisations that are professional bodies and that promote trade, commerce or industry. Organisations can go to the minister only on that basis that they do those things. The organisations that the member is talking about do not meet that test anyway, so they cannot go to the Minister for Finance.

Dr A.D. BUTI: That is not necessarily so. What about a body that has dual purposes and has one of the limbs? Many court cases deal with that issue—that is, bodies that have a trade, commerce or professional perspective, but also a political perspective. Those bodies would be able to go before the Minister for Finance under the minister's own legislation. It seems absurd that the minister has brought this bill before the house to deal with the Chamber of Commerce and Industry of Western Australia case. He has prescribed certain bodies, but one is obvious. Those political bodies that are not necessarily seeking to involve members of Parliament are not exempted under this clause; they can still go to the minister. The definition of "political party" in the legislation is incredibly narrow. There are political organisations that do not seek to have members of Parliament, because they believe they can do greater work or be more powerful outside the Parliament. Those organisations are not categorically exempted from going to the minister of the day. The minister's qualification was that the organisation needs to be a professional association or one that promotes trade, industry or commerce. Those organisations could also do that; therefore, they could go before the minister. One could quite easily see a situation in which a group of doctors set up an organisation, which would be a professional association, with the main purpose of preventing euthanasia or preventing abortions or some other medical issue. That organisation would have a political purpose, but it would also be a professional organisation. From the answer the minister gave me, such an organisation would come under the proposed act and could seek the minister's discretion because it has a dual purpose. If the minister was really serious about tightening up the ability of organisations such as the CCI not to pay the revenue that they should be paying to the taxpayers of Western Australia, why would he prescribe trade unions? Trade unions have dual purposes; they have many purposes. Even the union haters on the other side of the chamber would have to admit —

Mr I.C. Blayney interjected.

Dr A.D. BUTI: I do not know whether that was the member for Geraldton, but if the member was in the chamber during the earlier discussion, he would know that the member for Wanneroo made some statements that were quite consistent with a person who has a hatred of unions. It was a bit ironic that he, of all people, should talk about money. He has to put money under the bed! He is amazing!

The ACTING SPEAKER (Ms J.M. Freeman): Member!

Dr A.D. BUTI: Yes, Madam Acting Speaker.

The ACTING SPEAKER: Member, back to consideration in detail.

Dr A.D. BUTI: Sorry, Madam Acting Speaker.

Ms R. Saffioti interjected.

Dr A.D. BUTI: It was \$25 000 or something like that.

The ACTING SPEAKER: Member!

Dr A.D. BUTI: Why would the minister prescribe trade unions in the legislation? Personally, under the law of charitable trusts, I understand why trade unions are exempted, but it cannot be denied that trade unions have a public benefit. Trade unions often have an education arm, and they definitely have a relief from poverty arm, with some of the wages of low-paid workers. Of course, Joe Hockey reckons they do not drive cars, so it does

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

not really matter. Why would the minister prescribe that a trade union categorically cannot go to the minister, but other political organisations, which may be very divisive in their activities, can go to the minister and seek the minister's discretion to be exempted? The problem is that some of these bodies have incredible political power. I am not talking about the minister personally, but the minister of the day would be putting themselves in an unenviable position by allowing this discretion to be determined by the Minister for Finance. I will deal with that later. I go back to the point: why has the minister so narrowly defined "political party"?

Mr D.C. NALDER: In the first instance, an organisation must be defined as a charity before it can be considered for an exemption. These lobby groups and so on must be defined as a charity at first instance. If they are professional associations or fourth-limb charities that promote industry, trade and commerce, only then can they seek the minister's support. Is there the potential that part of someone's operations could be defined as a charity and above the threshold for having to pay payroll tax? Yes, there is, and that is why we want to manage those exceptions and why we have given the minister the power to make those decisions when it is appropriate. When we provide that power to the minister, it is done in concurrence with the Treasurer and it becomes public. At the end of the day, I believe that the ministers in this place need to be accountable. The decision will be made public; it will be on the record and it will have to be published. Although the member is technically correct, it would be a very rare situation that an organisation that was deemed to be a charitable organisation would meet the industry, trade and commerce criteria. I cannot see a euthanasia society ever achieving that. That is not to say that they will not have a limb that may do so; and, if they do, we will deal with that, but it is such a narrow possibility that I do not see it as being relevant at this point.

Dr A.D. BUTI: I have another question about the definition of political parties. One of a political party's objects or activities is the promotion of its election to Parliament and the standing of candidates. What about a political party that has one of its objects as the promotion of candidates for Parliament, which for maybe a year or two tries to build its public appeal, but is not registered with the Electoral Commission? I assume that to stand for election a political party has to be registered with the Electoral Commission. So what about a political party that has its objects and candidates for Parliament but is not registered with the Electoral Commission at that stage? As the minister would know, for a period of time, the Palmer United Party was trying to determine the name it would register with the Electoral Commission. For a period of time it was a political party that was not registered with the Electoral Commission, but it had the object of trying to get members into Parliament. Does the minister's definition of a political party in the legislation rest on the organisation having the object of seeking to have candidates in Parliament or is it that the party has to be registered with the Electoral Commission? To tell the truth, I think the minister has stuffed up. The minister's advisers may actually be a bit embarrassed, because to stand candidates at an election as a political party, the party has to be registered with the Electoral Commission, and that is nowhere in the minister's definition. The minister's definition just states to have the object to promote in regard to an election or to stand candidates. But at that stage, the political party may not be registered. What will the minister do in that particular situation?

Mr D.C. NALDER: I come back to the fact that the body needs to be a charitable institution in the first place. Charity institution would need to be defined. We keep referring to payroll tax, but these organisations that are starting up are not likely to have payrolls above \$800 000 anyway. The likelihood of that sort of situation occurring is so remote that it is not worth considering.

Dr A.D. BUTI: The minister may be correct there, but would he concede that in hindsight it would have been better for the definition to refer to political parties that are registered with the state or federal Electoral Commissioner?

Mr D.C. NALDER: First, it has to be a charity. Around the political parties, we felt this definition was a lot broader. We are trying to pick up any political party irrespective of persuasion; we are trying to pick up all of them. I think it is encompassing, so we are quite comfortable with this definition.

Mr W.J. JOHNSTON: I am happy to accept exactly what the minister says. I can accept that the minister is trying to capture a political party that may not be registered but has an object to get people elected to Parliament. I think the government has made an unintended error in the definition, so I will propose an amendment in a moment. I draw the minister's attention to the definition of "political party", which states —

Political party means a body or organisation, whether —

Et cetera —

... of a candidate or candidates endorsed by it or by a body or organisation of which it forms part;

The problem with that definition is that some political organisations conduct completely overt political activities, but they do not endorse candidates. They raise money for a political party to endorse candidates but they do not form part of the party. I will start with an organisation called Perth Trades Hall Inc of which I used to be

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

secretary. When I was state secretary of the Australian Labor Party, I was also secretary of Perth Trades Hall Inc. The rules state that the secretary of Perth Trades Hall Inc is the person occupying the position of secretary of the Australian Labor Party WA branch. The reason is that as the Labor Party is not an incorporated organisation, it cannot own property. I understand that Perth Trades Hall Inc is the oldest incorporated association in Western Australia. We recently changed the Associations Incorporation Act and there is a grandfathering provision from the former act. The Perth Trades Hall Inc is so old that it is covered by a grandfathering provision from the 1920 act. I think it was formed in 1889. It is not a part of the Labor Party, but it is able to—not that it does—transfer money from itself to the Labor Party, if something were to happen —

The ACTING SPEAKER (Ms J.M. Freeman): If it had any.

Mr W.J. JOHNSTON: If it ever had any money, it could do that. The point is that Perth Trades Hall Inc would not be covered by the definition because it is not a part of the party. Likewise, the 500 Club is not a part of the Liberal Party. It is the 500 Club Inc. If we look at the disclosure returns on the website of either commission—obviously, the information is identical on both—we will find that the 500 Club is what is called an associated entity of the Liberal Party in the same way as Perth Trades Hall Inc is an associated entity of the Labor Party. If we do not include associated entities, we could provide a window for somebody to create an organisation that has a fourth limb coverage with an objective to raise money not to endorse its own candidates but to support somebody else's candidates. Remember this definition is not needed today because no political party can get a fourth limb exemption. As the minister said in answer to questions earlier about why the government is including unions and political parties, it is because the government is afraid that in the future case law may develop and we may miss something.

Ms R. SAFFIOTI: I am very interested in what the member is saying and I would like to hear more.

Mr W.J. JOHNSTON: I thank the member for West Swan. We do not need this today because no political party can get fourth limb approval, but the government is afraid that the law may develop in a way that is unexpected, and it is trying to cover itself. Whether this is the best definition or another definition is better, that is what the government is trying to do. The government is trying to do a good thing, and that is why we are supporting it. Given that the government is afraid that the case law will develop in a way that it does not expect, it needs to make sure that the rules it is developing include things that we already know about—and we already know about associated entities. Normally, these sorts of provisions would include associated entity.

That is why I move —

Page 3, line 13 — To insert after “forms part” —

, or is an associated entity of a political party

Just scribbling here and checking with the Clerk (Assistant) while she is doing her other work is perhaps not the best way to design an amendment. Therefore, if the minister gives an undertaking that the government will ensure that associated entities is specifically included in the legislation, I probably would not need to proceed. However, at the moment the definition does not include associated entities—and it should. Given that political parties cannot get fourth limb approval today, and as we include this because we do not know what will happen in the future, it is no good saying an associated entity is not a charity blah, blah, blah because neither is a political party. The reason for this amendment is to take a belts-and-braces approach. Let us make sure that we capture all those organisations and associated entities. The minister has fully understood what that is all about. If the minister does not accept these words, I strongly urge him to give an undertaking that he will make sure that associated entities of political parties are defined as being outside the capacity to gain this fourth limb exemption being brought in for the first time by the bill.

Mr D.C. NALDER: I think the member for Cannington makes a fair point. However, I believe it is covered. I refer the member to proposed section 96A(f). Proposed section 96A states —

A reference to a relevant body is to any of the following —

- (a) a political party;
- (b) a trade union;
- (c) a professional association —

Et cetera. It includes —

- (f) a body that —

...

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

(iii) has as its sole or dominant purpose or object the conferral of a benefit, whether financial or non-financial, on a body referred to in another paragraph.

The member's point about the 500 Club, and any other entity that may be fundraising for either side of politics, is covered by this clause. The member raises a fair point but it is duly covered and therefore we do not need to make this amendment.

Mr W.J. JOHNSTON: I do not agree with the minister. I am not wedded to the particular set of words in this amendment. Given the references that the minister has just quoted, which are not part of this clause, although I understand why he has raised them, the minister should include a reference to “associated entity” in the definition of political party. In that way, there will never be any debate or discussion over this issue. The minister must remember that what we are doing today is backfilling, because this is not currently a problem; no political parties qualify under the fourth limb charity provisions. My amendment will ensure that the courts never allow a political party to have a fourth limb charity status. Given that is what we are doing, I reckon the best way to ensure that we catch that is to include in this clause a definition of associated entity so that the courts do not have any choice about what happens in the future. For example, if the 500 Club changed its objective to a range of purposes, of which raising money for the Liberal Party was not the dominant purpose, it would still be able to raise money for the Liberal Party; in fact, it would then be able to say to the community that the donation is, firstly, tax deductible, and, secondly, that the organisation is alleviating poverty. That is because fundraising would no longer be the dominant purpose of that organisation. As I am standing here on my feet thinking through the position the minister put to me, I come back to the view that the best way to solve that problem is to include “associated entity” in the definition of a political party; or, if the minister prefers, add it as another relevant body and provide a definition of what it is. We know what it is because we can look up the federal disclosure rules that set out what is an associated entity of a political party. I reckon we should get there before the courts do. We are doing this to backfill, which is a very good idea, and that is why the opposition agrees with the minister, but let us backfill in total.

Mr D.C. NALDER: The government believes that if this provision were applied to political parties, it would need to be applied to everyone below that. The government believes it is more effective in its current form, sitting under proposed section 96A and is covered by paragraph (f), and that it covers all the other bodies at the same time—that is, professional associations et cetera. The member's point is right, but it is already covered in this bill and therefore this amendment is unnecessary. If the government accepted this amendment, it would have to amend other definitions individually. The government thinks it has that point covered.

Mr W.J. JOHNSTON: This is the last time I will raise this issue. It seems the solution is to include “associated entity” in the definition of a political party. This is a unique situation. We know what trade unions and professional associations are, because the minister has provided a definition for those. We also know what an associated entity is, and it seems sensible to include it in the definition of a political party. The minister has tried to do that, because the definitions include “a body or organisation of which it forms part”, so he has clearly contemplated there might be bits and pieces going on inside a political party, but there is this other thing that is an associated entity. I do not think it should be included in proposed section 96A as a separate paragraph; it should be included in the definition of a political party. Will the minister give a commitment to consider this and before the bill gets to the other place we can have a proper discussion about it, because it is an important issue?

Mr D.C. NALDER: We will commit to looking at this, as requested.

Amendment, by leave, withdrawn.

Ms R. SAFFIOTI: I refer to the definitions of “professional association” and organisations that “promote trade, industry or commerce”. A list of organisations appeared in *BusinessNews Western Australia* that were typical of organisations that have either received the benefit of a refund or are likely to receive an exemption if we do not pass this legislation. Are there any other organisations not included on this list that could receive an exemption?

Mr D.C. NALDER: This is a list out of *BusinessNews Western Australia* of non-profit organisations and they are not necessarily charities. This brings us back to the definition of a charity. The organisations listed are not necessarily related to what we are doing here and what organisations we are looking to exempt or not exempt. This list has no relevance to this legislation.

Mr B.S. WYATT: I want to confirm a couple of things with the minister about the definitions of “professional association” and “promote trade, industry or commerce”. The minister is seeking to limit the fourth limb of the common law definition of a charity. One of the big discussion points by Judge Chaney in the particular State Administrative Tribunal decision was whether the Chamber of Commerce and Industry of Western Australia provided its services generally or specifically to its members. The definition reads —

Mr Bill Johnston; Ms Janine Freeman; Mr Dave Kelly; Mr Dean Nalder; Acting Speaker; Mr Colin Barnett; Mr Ben Wyatt; Mrs Glenys Godfrey; Mr Fran Logan; Dr Tony Buti; Ms Rita Saffioti

promote trade, industry or commerce includes to carry out an undertaking a purpose of which includes the promotion of, or the advocacy for, trade, industry or commerce, whether generally or in respect of any particular kind ...

This definition deals with the key question that was considered by Judge Chaney and similarly, by extension, the definition of a “professional association”, meaning a body or organisation having as one of its objects or activities the promotion of the interests of its members in any profession. To a certain extent, it flows from the minister’s discussion with the member for Cannington about an associated entity. The minister is trying to capture any professional association, regardless of what other activities it carries out. Could the minister confirm that the definition captures an organisation, provided one of its objects is in the interests of those members?

Mr D.C. NALDER: The purpose of the definition is to exclude organisations, based on what the member was talking about, if they have one purpose or a major purpose along those lines. However, that is not to say that they may not have other activities that will continue, in which case they can then apply to the minister to seek reinstatement around that particular aspect. We are trying to capture what the member is espousing. That is why we have this backstop of being able to seek a minister’s approval in a specific area. Where all of us believe that an organisation is really a charity, they will be exempted. That is what we are trying to capture. If there is any small minor part that the common man would define, we would expect the minister to make a decision on that outcome.

Debate interrupted, pursuant to standing orders.

[Continued on page 5356.]